

EXHIBIT H

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DISTRICT

4 JAQUELINE SMITH,

5 Plaintiff,
6

7 vs.

No. 2:20-cv-13470-PJD-MAR

8 CO/OP OPTICAL SERVICES, INC.,
9 a Michigan corporation,
10

11 Defendant.
12
13 _____/

14 The deposition of ROBERT MORRIS, taken
15 before Suzanne M. McGovern, CSR 2655, Notary
16 Public for Oakland County, at 38505 Woodward
17 Avenue, Suite 2000, Bloomfield Hills, Michigan, on
18 Monday, January 24, 2010, at approximately 12:35
19 p.m.

20 APPEARANCES:

21 JESSE L. YOUNG, ESQ.

22 SOMMERS SCHWARTZ, P.C.

23 2000 Town Center, Suite 900
24 Southfield, Michigan 48075
25

Appearing on behalf of the Plaintiff

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1 agency that provides regulation for entities that
2 are financial in nature or deal with insurance.
3 Q. How familiar are you with Co/op's financial
4 condition?
5 A. I think fairly familiar.
6 Q. Okay. Do you know what RBC is?
7 A. Yeah. It's a rate based capital ratio.
8 Q. Okay. Is there a certain ratio that is ideal for
9 Co/op to be at, do you know?
10 A. Yeah. The state expects -- the state expects
11 Co/op to be at three hundred or higher.
12 Q. Okay. Do you know what Co/op's RBC is
13 presently?
14 A. I think it's around in the thirties.
15 Q. Okay.
16 A. And that's as high as it's been in some time.
17 Q. Do you have any knowledge as to what the RBC was
18 in late December 2009?
19 A. It was --
20 Q. I'm sorry. Early --
21 A. Go ahead.
22 Q. Late December 2009. I'm sorry, late 2009, early
23 2010.
24 A. It was very low. Thirty if not lower. And there
25 was great fear that it would go below zero and

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1 that would have triggered a bunch of problems.
2 Q. Do you know if it ever went below zero?
3 A. Has it -- yes.
4 Q. When?
5 A. Probably in '08, possibly '09 time period.
6 Q. Have you ever testified in court before?
7 A. No.
8 Q. And you said you've never given a deposition;
9 right?
10 A. No.
11 Q. Okay. Have you ever been a plaintiff or a
12 defendant in a case?
13 A. No.
14 Q. Are you currently taking any medications that
15 would affect your ability to answer my questions
16 that I ask you today?
17 A. No. I don't think so.
18 Q. Have you discussed this case with anybody other
19 than your attorney?
20 A. This case, I don't think so. I may have mentioned
21 some things to my wife, but just in passing.
22 Q. Did you ever have any conversations with any
23 individual board members about the case on an
24 individual one-on-one basis?
25 A. Not directly. Like depositions are occurring,

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1 things like that, but not specifics.
2 Q. What did you do to prepare for this deposition
3 today?
4 MS. CAULEY: Other than talk to your
5 lawyer.
6 Q. (MR. YOUNG) Yeah. I don't want to know what you
7 talked to your attorney about.
8 A. Yeah. I talked to my attorney and I kind of went
9 through my files, which I think you should have.
10 Q. Okay.
11 A. Just to refresh my memory.
12 Q. You've produced all those files to your
13 attorney?
14 A. Yeah.
15 MS. CAULEY: And they've been produced to
16 you.
17 Q. (MR. YOUNG) Okay. Have you read the complaint in
18 this case?
19 A. You know, I did. I probably should have read it
20 before, you know, coming out, but I did read it
21 when it first, you know, when we first -- when it
22 first happened.
23 Q. Okay. Do you have any criticisms about Jackee
24 Smith's performance as CEO?
25 A. Yeah. I was very disappointed in a number of

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1 things. I think the most significant being when I
2 came on the board in December of '09, there was an
3 issue with the state. There was an issue in terms
4 of getting material to the state. I think it was
5 our annual budget and in that budget was going to
6 be a series of cuts that had to be made and it
7 seemed after we sent that material to the state
8 there still wasn't a hurry -- there wasn't a plan
9 really to implement the cuts that had to be made.
10 It's over three hundred and, I think, forty
11 thousand dollars worth of administrative cuts and
12 that concerned me a lot and I think if you don't
13 make cuts like that at the beginning of a fiscal
14 year when you do have to make them, it becomes
15 harder and harder. I was discouraged at the
16 conflict with the top management and almost all of
17 these top management had been people hired by her
18 and I was -- I thought board meetings and some
19 other activity that I saw were, frankly, just not
20 professional and that bothered me a great deal.
21 Q. Okay. With respect to the budget cuts that you
22 were just talking about, is that Jackee's full
23 responsibility as a CEO?
24 A. She's the captain of the ship and I think the
25 board viewed her as responsible, yes.

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1 Q. Okay. With respect to conflict with the top
2 management, who were you talking about when you
3 say top management?
4 A. I'm talking about Jackee. I'm not sure I've got
5 all these positions right, but chief financial
6 officer, the chief operating officer and I think
7 those are the top ones.
8 Q. That is Ted and Charles?
9 A. Ted and Charles. Yeah.
10 Q. Did you ever communicate these criticisms to
11 Jackee personally?
12 A. I think I did. Yes.
13 Q. How did you do that?
14 A. Informal communication.
15 Q. Orally?
16 A. Yeah.
17 Q. Did you ever send her e-mails or any letters or
18 anything?
19 A. I don't think so.
20 Q. How did she respond?
21 A. Usually there'd be a conversation and, you know, I
22 would usually have a conversation, I think the
23 problem is either over or will hopefully begin to
24 be resolved, but sometimes the message apparently
25 wasn't received. For example, and I think it was

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1 mentioned at the first meeting we had with OFIR,
2 that the person who they had the most confidence
3 in in our organization was Ted and it was clear
4 that no -- we were, yes, making some management --
5 some changes and some decisions on employees, but
6 Ted was a person that we could not afford to lose
7 because we would -- it would be a direct --
8 direct problems with OFIR and I think in late
9 January Ted was fired.
10 Q. When did you communicate your criticisms of Jackee
11 to Jackee?
12 A. I think in a period -- and I can't remember
13 specific dates, but I think in a period maybe as
14 early as the last week in December in '09 and into
15 January and I want to -- I think my emphasis would
16 be on hearing things, what about this issue or
17 that issue and can we move -- is there a way to
18 move forward would have been the nature of the
19 type of discussion.
20 Q. Do you know why Jackee was terminated from
21 Co/op?
22 A. She was terminated because --
23 MS. CAULEY: Well, wait. I'm going to
24 object on foundation. He can testify as to his
25 own vote or what anyone else told him, but he

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1 can't guess as to what other people --
2 MR. YOUNG: I'm not asking him to guess.
3 Q. (MR. YOUNG) Do you know why she was terminated?
4 A. Yeah. She didn't have the votes on the board.
5 Q. You had a vote; right?
6 A. Yes.
7 Q. How did you vote?
8 A. I'm not sure if the vote was to terminate. You
9 know, sometimes it can be a yes or a no, but
10 essentially I thought it was time for a change.
11 Q. Okay. This vote was March 19th, 2010; correct?
12 A. I believe so.
13 Q. And you became a board member in December of 2009;
14 correct?
15 A. Yes.
16 Q. Did you ever feel that Jackee should be given
17 another chance as CEO?
18 A. In the course of discussions with other board
19 members in January, primarily January, that was
20 talked about, you know, could we -- I mean the
21 Co/op was in danger of going under and the
22 conflict with top management was a huge
23 distraction and so the question was could -- could
24 Jackee work with the other staff and the board
25 stay, all the different players and so there was

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1 hope that maybe she might be able to continue and
2 then hope that maybe there might be a -- you know,
3 she might move on on her own and that didn't
4 happen.
5 Q. Was there any discussion about terminating the CFO
6 or the COO during the same time period?
7 A. Yeah. Yes.
8 Q. Did the board ever vote as to whether to terminate
9 those positions, I'm sorry, terminate those people
10 from those positions that currently held them?
11 A. There was a vote that I don't think some people
12 appreciated where Charles was removed. There was
13 not a vote on Ted.
14 Q. Why did -- if you know, why did some people not
15 appreciate the vote to remove Charles?
16 A. Well, I think the way, if my memory is correct, we
17 had a meeting on a Tuesday in mid to late January,
18 officers meeting, I think and we saw a series
19 of -- there was a plan in place that had been
20 developed to implement the three hundred forty
21 thousand dollars in cuts that we wanted to make
22 and the next day there was a board meeting and I
23 think we were -- and the vote was made and we were
24 surprised after -- I think -- there wasn't enough
25 discussion made on that vote and I think in

<p style="text-align: right;">Page 34</p> <p>1 charge. It seemed extremely high and then there's</p> <p>2 a Comfort Suites, I think that was -- that may be</p> <p>3 referring to a local hotel where Jackee indicated</p> <p>4 she needed to get away from her house to do some</p> <p>5 Co/op work.</p> <p>6 Q. Okay. It says in the last paragraph at the bottom</p> <p>7 that the Omni Hotel Spa is an approved expense.</p> <p>8 A. Yes.</p> <p>9 Q. Do you have any reason to dispute that?</p> <p>10 MS. CAULEY: What, that it was approved or</p> <p>11 that it should have been approved?</p> <p>12 MR. YOUNG: That it was approved.</p> <p>13 THE WITNESS: Just that in the course of</p> <p>14 whatever, the acting chairman had, you know, this</p> <p>15 is his document so --</p> <p>16 Q. (MR. YOUNG) Okay. Is it your understanding that</p> <p>17 Jackee after all this, all these allegations, that</p> <p>18 she was only required to reimburse the company for</p> <p>19 this Comfort Suites' expense for approximately a</p> <p>20 hundred forty dollars?</p> <p>21 MS. CAULEY: Objection, lack of</p> <p>22 foundation. You have no foundation that he knows</p> <p>23 what was going on during the course of this, where</p> <p>24 your client, every time something was discovered,</p> <p>25 she's reimbursing all along the line. You're</p>	<p style="text-align: right;">Page 36</p> <p>1 MS. CAULEY: Objection, lack foundation.</p> <p>2 Q. (MR. YOUNG) You can answer.</p> <p>3 MS. CAULEY: If you know.</p> <p>4 Q. (MR. YOUNG) If you know.</p> <p>5 A. No. I mean I don't know. I don't know.</p> <p>6 Q. Okay. Do you know whether Jackee ever requested a</p> <p>7 medical leave from Co/op?</p> <p>8 A. I assume she did when she went on medical leave.</p> <p>9 I mean, so, you know, beyond that, I don't know.</p> <p>10 I just know she was on medical leave, so I assume</p> <p>11 there was a request made.</p> <p>12 Q. When did you first learn she was on medical</p> <p>13 leave?</p> <p>14 A. Maybe immediately before or immediately after it</p> <p>15 happened. That was in like early February, I</p> <p>16 think.</p> <p>17 Q. Do you remember how you learned of it?</p> <p>18 A. I'm assuming from talking to one of the board</p> <p>19 members.</p> <p>20 Q. Do you know which one?</p> <p>21 A. I think my guess would be Marc Stepp. It could</p> <p>22 have been Ray.</p> <p>23 Q. Could it have been Blair?</p> <p>24 A. It could -- well, it could have been.</p> <p>25 MS. CAULEY: Lack of foundation.</p>
<p style="text-align: right;">Page 35</p> <p>1 asking a question of someone who could not</p> <p>2 possibly know what happened.</p> <p>3 Q. (MR. YOUNG) Do you know what happened?</p> <p>4 A. I don't know what happened so --</p> <p>5 Q. Okay. Well, do you know if Jackee ever paid the</p> <p>6 hundred forty dollars?</p> <p>7 A. I don't know. I assume she did, but I don't</p> <p>8 know.</p> <p>9 Q. Okay. Do you believe Jackie was treated</p> <p>10 differently at Co/op because she was a woman?</p> <p>11 A. No.</p> <p>12 Q. Did you ever hear any of the board members ask her</p> <p>13 to make plates of food for her -- for them?</p> <p>14 Excuse me.</p> <p>15 A. No. I think -- I was only at a couple board</p> <p>16 meetings, but I think Jackee helped. We have some</p> <p>17 board members who have mobility issues and I think</p> <p>18 she may have helped and others helped. You know,</p> <p>19 we'd serve a lunch at a board meeting and I never</p> <p>20 saw anything that struck me as being a demand or</p> <p>21 anything else. It was more if someone was</p> <p>22 helping, it was more a friendly gesture that we</p> <p>23 should see more of.</p> <p>24 Q. Do you know whether Jackee was suffering from any</p> <p>25 health problems in late 2009 or early 2010?</p>	<p style="text-align: right;">Page 37</p> <p>1 THE WITNESS: You know, at that time, no.</p> <p>2 No. I think it was more likely to be Marc Stepp</p> <p>3 or Ray.</p> <p>4 Q. (MR. YOUNG) Okay. Did you ever see the paperwork</p> <p>5 that she turned in to HR?</p> <p>6 A. No.</p> <p>7 Q. What's your understanding of the, if you have one,</p> <p>8 of the Family Medical Leave Act?</p> <p>9 A. I have very little understanding of it, except --</p> <p>10 Q. That's fine.</p> <p>11 A. If one has certain types of health problems, they</p> <p>12 can take a leave.</p> <p>13 Q. Anything else, do you know anything about</p> <p>14 employers' rights or the employee's rights under</p> <p>15 the FMLA?</p> <p>16 A. Not really, you know.</p> <p>17 Q. Did anybody ever tell you that they thought Jackee</p> <p>18 was faking a medical condition?</p> <p>19 A. I don't think so. No.</p> <p>20 Q. Did you ever have contact with Jackee while she</p> <p>21 was on medical leave?</p> <p>22 A. I don't think so. It's possible there may have</p> <p>23 been a phone call or two, but I think -- but for</p> <p>24 the most part I don't think so.</p> <p>25 Q. Did you ever communicate directly to OFIR?</p>